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STATUTES

IN THE

Supreme Court of the United States

October Term, 1948.
No. 782.

CHARLES C. LOCKARD, RAY MYRE, W. E. ROBERTSON, *et al.*,

Petitioners,

vs.

CITY OF LOS ANGELES, *et al.*,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Foreword.

Respondents respectfully submit that the substance of the petition for the issuance of a writ of certiorari in this cause relates to matters of local practice, and is an attack upon the decision of the State Court which is based upon conflicting evidence. These are matters which this Honorable Court has declared on numerous occasions that it will not consider.

Statement of the Case.

The complaint [Record pp. 1 to 24] is in two counts. The first cause of action complains of petitioners' property being placed in a commercial zone (C-2) because their property is suitable only for light manufacturing purposes such as are permitted in the M-1 zone. The second cause of action is based upon a refusal of the City Planning Commission and the City Council to change the zoning of their property from C-2 to M-1.

The petition for certiorari alleges, on page 4, that:

> "* * * petitioners brought this action in the Superior Court, contending that the ordinance insofar as it applies to petitioners' property was discriminatory, confiscatory and unconstitutional; that it was depriving the petitioners of their property without due process of law, in violation of Amendments V and XIV of the Constitution of the United States and Sections 1 and 14 of Article I of the Constitution of the State of California."

Examination of the complaint [Record pp. 1 to 24] discloses numerous allegations such as,

> "said action on the part of the City Council is confiscatory in nature and is depriving the plaintiffs of the use of their property without due process of law" [Par. XXIV, Record p. 8, fol. 13]; "that if the said property is not zoned 'M I' or they are not permitted to use their property for light manufacturing purposes, their property will in effect be confiscated, as said property is unsuitable for any other use or purpose whatsoever" [Par. XXV, Record p. 9, fol. 13]; "that such refusal on the part of said Boards and said Council to permit the plaintiffs to use said prop-

erty as prayed for in their petitions and in their appeals is divesting and depriving the plaintiffs of the use of their property and of their constitutional rights" [Par. XXIX, Record p. 10, fol. 14]; "that by adopting the maps submitted by the Planning Commission and zoning a portion of Jefferson Boulevard immediately adjacent to the property in question as Zone 'M-1' and refusing to grant similar rights to the plaintiffs, was arbitrary and was a discrimination against the plaintiffs" [Par. XXX, Record p. 10, fol. 15]; "that the ordinance * * * is depriving the plaintiffs of a valuable property right and is discriminating against the plaintiffs, and that said ordinance is void and unconstitutional" [Par. XXXIV, Record p. 11, fol. 16]; "that the enforcement of the ordinance * * * deprive the plaintiffs of vested property rights" [Par. XXXVI, Record p. 11, fol. 17]; "that the defendants * * * attempting to limit the use to which plaintiffs can put their property by the ordinance * * * is a violation of the constitutional rights of the plaintiffs and divests plaintiffs of a substantial property right" [Par. XXXVII, Record p. 11, fol. 17].

The only reference in the complaint to the Constitution of the United States is found in paragraphs XL and XLI [Record pp. 12-13, fols. 19-20]. These two paragraphs are as follows:

"XL.

That the ordinance and ordinances of the City of Los Angeles insofar as it limits the plaintiffs in the use of their property for light manufacturing purposes and prevents the plaintiffs from the use of their property for light manufacturing purposes and for any other use other than as permitted in Zone 'C2'

is void and unconstitutional and deprives the plaintiffs of the use of their properties without due process of law, and is contrary to the Constitution of the State of California and the Constitution of the United States of America, and deprives the plaintiffs of vested property rights, and deprives the plaintiffs of the use of their property for lawful purposes contrary to the guarantee provided by the Constitution of the State of California, and the Constitution of the United States of America; that such ordinances, insofar as they restrict the plaintiffs in the lawful use of their property and the use of their property for light manufacturing purposes, is in violation of the constitutional guarantee of the plaintiffs, and such ordinances are void, unconstitutional and unenforceable."

"XLI.

That such ordinances in preventing the plaintiffs from the use of their property for light manufacturing purposes, while permitting the use of other similar, adjoining, surrounding and adjacent property as that of the plaintiffs for light manufacturing purposes and the purposes to which the plaintiffs desire to use their property, are unfair, unjust, and such ordinances are void and unconstitutional and deprive the plaintiffs of rights granted to other property owners adjoining, surrounding and adjacent to the property of plaintiffs, and is in direct violation to the Constitutional guarantee of the Constitution of the State of California and of the United States of America."

No reference is made to the United States Constitution in the Findings of Fact and Conclusions of Law [Record pp. 30 to 44]; nor in the judgment entered by the trial court [Record pp. 45 to 48].

It is not claimed by petitioners that the California Supreme Court has not correctly stated the evidence upon which it arrived at the conclusion that the ordinance should be sustained as a valid legislative enactment. The gist of petitioners' contention is disclosed by the following excerpt from their brief filed in support of their petition:

> "It would appear that the Supreme Court of California reasoned that, notwithstanding the trial court's findings of fact which were amply supported by the evidence that there was no debatable question, it had the right to review the facts and reach its own conclusion that the question of the reasonableness of the ordinance was debatable; that therefore it would hold this ordinance valid since its validity was reasonably debatable." (Pet. and Br. p. 10.)

Petitioners' statement of the "Questions Presented" (Pet. and Br. p. 5) contains, in both "*Question* 1" and "*Question* 3," reference to the existence of "conflicting evidence."

In view of the limited issues thus presented, reference need only be made to the facts as stated in the opinion of the California Supreme Court, upon which it concluded that the reasonableness of the zoning regulations was not beyond the realm of legitimate debate and that therefore the ordinance should be upheld.

The opinion of the California Supreme Court [Record pp. 159 to 179] after reviewing the evidence in considerable detail, states:

> "It appears from the record in the present case that there are undisputed physical facts which sup-

port the action of the planning commission and the city council in refusing to extend the boundaries of the M-1 zone. The maps introduced in evidence show clearly and graphically that both the industrial and commercial zones are small in comparison with the surrounding residential areas; that the industrial zone is located at one end of a long narrow strip zoned for light commercial uses designed to serve the residential areas; and that the present industrial area is bordered by a railroad which does not extend along the commercial zone but runs diagonally away from it. Also, most of the property south of the M-1 zone is publicly owned and occupied for school and playground purposes and is not available for private use, whereas all the property surrounding the C-2 strip is residential in character and fairly well developed. The legislative body was entitled to consider the fact that any extension of the industrial zone would not only tend to impose added burdens on the surrounding residential areas and create undesirable conditions such as noise, smoke, and heavier traffic, but might tend to displace the existing commercial uses, and to force those uses, in turn, to encroach upon the residential areas.

[Fol. 273]: "The problem thus presented to the planning commission and city council was essentially that of determining where to draw the lines of demarcation. Plaintiffs here are not merely seeking to obtain reclassification of a number of scattered parcels, but rather are attempting to increase the M-1 area to encompass an entire additional twelve-block district, including both their own properties and the

properties of many persons not made parties to the action. Whether an industrial area should be so increased in size, and whether certain types of business uses may be permitted in sections immediately adjacent to residential areas, while manufacturing and industrial or other uses are prohibited, is primarily a matter of legislative concern and involves determinations not only of facts with respect to existing conditions in an area, but also of policy and opinion as to its future development. (See *Sunny Slope Water Co. v. City of Pasadena,* 1 Cal. 2d 87, 93.) Accordingly, in the present case, whether the twelve-block strip was suitable for commercial uses or only for light industrial purposes, whether its development would be unduly hampered by the regulations, and whether the welfare of the surrounding residential areas would be enhanced by those regulations were all questions addressed to the legislative authorities, and their decision cannot be disturbed if the matters are fairly debatable. * * *

"For the same reason the finding of the trial court that the area on Jefferson zoned M-1 is similar and identical to the area zoned C-2 is not controlling on the issue of the reasonableness of enacting the ordinance. It is well-established that similar characteristics in adjacent and surrounding areas do not necessarily preclude the zoning authorities from placing adjoining territories in different zones or justify a court in substituting its judgment for the legislative decision. (See *Reynolds v. Barrett,* 12 Cal. 2d 244, 249; *Feraut v. City of Sacramento,* 204 Cal. 687, 693; *Ex parte Hadacheck,* 165 Cal. 416, 422; *Brown v.*

City of Los Angeles, 183 Cal. 783, 787.) Moreover, the two zones were not identical in that the record and the findings show that the surrounding areas are different. It is true that similar properties lie to the north of the two strips of property, although a more substantial portion of the land lying to the north of the C-2 strip was zoned solely for single family dwellings. The properties lying to the south, however, are decidedly different. The M-1 zone, being bordered by a railroad track, is more adaptable to industrial use, and almost all of the property immediately across the railroad track is devoted to public school and playground uses. On [fol. 276] the other hand, the C-2 strip is not bordered by the railroad and, except for about three blocks (one zoned M-1 and two zoned C-2), all of the property to the south is residential in character. Most of it is zoned for single family dwellings, and a large portion of it is in use only for residential purposes. * * * [fol. 277] The only conflict in the evidence is to be found in the opinions of the witnesses as to future development of the property and as to the effect on surrounding territory of its use for various purposes. A commercial district of this type is necessarily limited as to expansion by the development of the surrounding area, and the fact that the district has developed slowly is not determinative of the reasonableness of the restrictions, since one of the bases for zoning regulations is the guidance of future development for the protection of residential areas. (See *Sunny Slope Water Co. v. City of Pasadena,* 1 Cal. 2d 87, 93.) To be effective, zoning regulations must

necessarily look to the future, and in determining what uses should be permitted in the twelve-block strip, the legislative body was, of course, entitled to consider the effect of such uses on the surrounding areas, and to weigh the possibility of injury to those areas by reason of permitting various types of activity as against the desirability of allowing such uses. In view of the various factors involved and the testimony of the experts, it is clear that the propriety of restricting the twelve-block strip to C-2 uses and its suitability for such uses were reasonably debatable, and it cannot be said that the regulations were unreasonable or arbitrary. * * *

"As we have seen, the problem presented to the zoning authorities in the present case was essentially that of determining where to draw the lines of demarcation between different zones. Various problems of wisdom and necessity are involved in such a determination, and, although there were a number of factors which, when considered together, might have justified an extension of the M-1 zone to embrace the twelve-block area, there are undisputed physical facts in the record which support the action of the planning commission and the city council in placing the strip in a C-2 zone. It is, therefore, apparent that the reasonableness of the zoning ordinance was fairly debatable, and it cannot be held that the zoning authorities acted arbitrarily."

Summary of Argument.

Respondents respectfully submit that for the reasons outlined this Honorable Court should deny the petition for certiorari filed in this cause.

1. The question of infringement of rights protected by the Federal Constitution was not properly raised in the State Courts.

2. The asserted error of the California Supreme Court in disregarding the findings of the trial court based on conflicting evidence and examining the entire record in arriving at its decision relates to a matter of State practice exclusively, as to which this Honorable Court will not concern itself.

3. The claim of error on the part of the California Supreme Court in upholding the validity of the ordinance is, in the light of the record, nothing more than a request that this Honorable Court evaluate the evidence introduced and arrive at an independent decision as to its sufficiency.

ARGUMENT.

POINT I.

The Question of Infringement of Rights Protected by the Federal Constitution Was Not Properly Raised in the State Courts.

As pointed out in the foregoing statement of the case, no mention of the Fifth or Fourteenth Amendments to the Constitution of the United States was made, either in the complaint or in the findings of fact and conclusions of law, or in the judgment of the lower court.

To allege that an ordinance is void and unconstitutional or in violation of the Federal and State Constitutions is not sufficient. In the first place, this Honorable Court is not concerned with the question of asserted conflict with the *State* Constitution. (*Miller v. Strahl,* 239 U. S. 426, 431.) As to a claim of infringement of rights guaranteed by the Federal Constitution, it is necessary that the particular clause of the Constitution of the United States relied upon be designated. (*Capitol City Dairy Co. v. Ohio;* 183 U. S. 238, 248, 249.)

The Constitution of the State of California requires that "all laws of a general nature shall have a uniform operation"; that "no person shall * * * be deprived of life, liberty or property without due process of law"; that "private property shall not be taken or damaged for public use without just compensation having first been made to, or paid into court for, the owner"; "nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be

granted to all citizens." (Cal. Const., Art. I, Secs. 12, 13, 14, 21.) In short, the guarantees of the Constitution of the State of California and of the United States are substantially the same in these respects. Respondents feel that they may assert with confidence that the courts of California are ever zealous in protecting the constitutional rights of the individual and look to this Honorable Court for guidance in the interpretation and application of constitutional provisions. However, in practice and generally speaking, no specific reliance or consideration is given to the Constitution of the United States as distinguished from the Constitution of California in determining whether a statute or ordinance constitutes an unreasonable exercise of the police power or is discriminatory, as the applicable guarantees of both constitutions are substantially the same.

Under such circumstances, it is all the more evident that the question of infringement of rights guaranteed by the Federal Constitution was not raised in the State Courts by petitioner in the manner required in order to invoke the jurisdiction of this Honorable Court.

POINT II.

Petitioners' Claim of Error on the Part of the California Supreme Court in Reviewing the Entire Record Relates to a Matter of State Practice.

Petitioners' statement of the questions presented (Pet. and Br. p. 5) sets forth as the first question the right of a reviewing court to ignore the findings of fact of the trial court made on conflicting evidence, and as the second question substantially the same inquiry, namely, must the Supreme Court of California conclude as a matter of law from the findings made by the trial court that the ordinance as it affects petitioners' property is arbitrary, confiscatory, discriminatory and therefore unconstitutional. *"Question 3"* appears to fall within the same general category.

With regard to the matter of the trial court's findings being controlling on the appellate court, the California Supreme Court stated in the opinion, at pages 166 and 167 of the Record [fols. 269-271]:

> "* * * The only function of the courts is to determine whether the exercise of legislative power has exceeded constitutional limitations. As applied to the case at hand, the function of this court is to determine whether the record (fol 270) shows a reasonable basis for the action of the zoning authorities, and, if the reasonableness of the ordinance is fairly debatable, the legislative determination will not be disturbed. (*Acker v. Baldwin,* 18 Cal. 2d 331, 344; *Sunny Slope Water Co. v. City of Pasadena,* 1 Cal. 2d 87, 94; *Feraut v. City of Sacramento,* 204 Cal. 687, 696; *Jardine v. City of Pasadena,* 199 Cal. 64, 72; *Zahn v. Board of Public Works,* 274 U. S. 325, 326; see *Reynolds v. Barrett,* 12 Cal. 2d 244, 249.)

"The findings and conclusions of the trial court as to the reasonableness of a zoning ordinance are not binding on an appellate court if the record shows that the question is debatable and that there may be a difference of opinion on the subject. The appellate courts look beyond such determinations and consider in some detail the basic physical facts appearing in the record, such as the character of the property of the objecting parties, the nature of the surrounding territory, the use to which each has been put, recent trends of development, etc., to ascertain whether the reasonableness of the ordinance is fairly debatable. (See *Wilkins v. City of San Bernardino,* 29 Cal. 2d 332, 338-339; *Acker v. Baldwin,* 18 Cal. 2d 341, 344; *Hurst v. City of Burlingame,* 207 Cal. 134, 143; *cf. Matter of Throop,* 169 Cal. 93, 97-99.) Similarly, findings which relate to matters of opinion and judgment, such as that property is 'suitable only' for certain purposes, are not controlling. (*Skalko v. City of Sunnyvale,* 14 Cal. 2d 213, 216; see *Jardine v. City of Pasadena,* 199 Cal. 64, 75.) As we have seen, matters of this type lie within the discretion of the zoning authorities, and their action will be upheld if the question is fairly debatable."

It is apparent that the California Supreme Court, in refusing to be bound by the trial court's findings merely followed the declared State practice in this type of case. This is a question which this Honorable Court will not review. (*Greenough v. Tax Assessors of City of Newport,* 331 U. S. 486, 489; *Yazoo & M. V. R. Co. v. Adams,* 180 U. S. 1, 8.)

The same is true of the contention made at page 24 of the petitioners' brief that their motion to receive additional evidence made in the California Supreme Court should have been granted.

POINT III.

Petitioners Are in Effect Requesting a Review and Evaluation of Conflicting Evidence.

Aside from the fact that petitioners' claim of error relates to matters of State practice, what petitioners are attempting apparently is to request this Honorable Court to review conflicting evidence upon the reasonableness of the ordinance.

The language found in *Railway Express Agency v. New York* (decided January 31, 1949), 93 Adv. Op. (L. Ed.) 396, in sustaining a traffic regulation of New York City, seems equally applicable to the case at bar, it being there stated (at pages 398, 399):

> "* * * We do not sit to weigh evidence on the due process issue in order to determine whether the regulation is sound or appropriate; nor is it our function to pass judgment on its wisdom. See Olsen v. Nebraska, 313 U. S. 236, 85 L. ed. 1305, 61 S. Ct. 862, 133 ALR 1500. We would be trespassing on one of the most intensely local and specialized of all municipal problems if we held that this regulation had no relation to the traffic problem of New York City. It is the judgment of the local authorities that it does have such a relation. And nothing has been advanced which shows that to be palpably false."

In *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287, it is pointed out that, while this Honorable Court has the ultimate power to search the record in the State Courts where a claim of unconstitutionality is effectively made, it is not for it to make an independent valuation of the evidence and it can reject the determination of the State judiciary only if it can say that the evidence is

so unwarranted as to be a palpable evasion of such constitutional guaranty. It was there said, at page 294:

> "The place to resolve conflicts in the testimony and in its interpretation was in the Illinois courts and not here. To substitute our judgment for that of the State court is to transcend the limits of our authority."

Conclusion.

It is respectfully submitted that the record in this case shows that the proceedings in the California Supreme Court do not disclose any just ground for complaint and that no reviewable questions are presented by the petition for writ of certiorari or the accompanying brief of petitioners; and that the petition should be denied.

Respectfully submitted,

RAY L. CHESEBRO,
City Attorney,

BOURKE JONES,
Assistant City Attorney,

ROGER ARNEBERGH,
Assistant City Attorney,

By BOURKE JONES,
Assistant City Attorney,

Attorneys for Respondents.